

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PETER T. HARRELL,

Plaintiff, No. CIV S-05-0420 GEB CMK

VS.

DARREL LEMOS, et al.,

Currently before the court is the bill of costs submitted by defendant. Plaintiff has filed an opposition to the bill of costs, and defendants have replied to the opposition.

Plaintiff, Peter Harrell, brought this civil rights action alleging various violations of his civil rights and of state law stemming from a September 2003 arrest. At the time that plaintiff filed his suit, the charges stemming from the arrest had been dismissed. At a hearing held on October 26, 2006, it became clear based on the statements of both parties that criminal charges stemming from the September 2003 arrest had been re-filed in January 2006. By order filed October 30, 2006, the court ordered plaintiff to, within fifteen days, file a second amended complaint alleging that the criminal charges against him stemming from the September 2003 arrest were dropped, resolved in his favor, or otherwise called into question. (Doc. 3.)

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1 Plaintiff filed a second amended complaint on November 14, 2006. On
2 November 22, 2006, defendants filed a motion to dismiss the second amended complaint and
3 filed a request for judicial notice of the state charges which were pending against plaintiff as a
4 result of the September 2003 arrest. The court filed findings and recommendations on December
5 1, 2006 recommending that plaintiff's second amended complaint be dismissed without
6 prejudice and that defendants' motion to dismiss be rendered moot. On January 4, 2006, the
7 findings and recommendations were adopted. Plaintiff has appealed the dismissal to the Ninth
8 Circuit, thereby divesting this court of jurisdiction in this matter.

9 In light of the pending appeal, the court will deny defendants' bill of costs
10 without prejudice to renewal after the Ninth Circuit's ruling on plaintiff's appeal.

11 IT IS SO ORDERED.

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13 DATED: January 24, 2007.

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16 CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE